The wording of sub-s. 7 paragraph (d) is to be noted, " In proceedings under *this* Ordinance a debtor shall be *referred* to as a debtor and not as a bankrupt." Nowhere does it say that he is not a bankrupt. In fact he is a bankrupt though the Legislature has seen fit to enact that for the purposes of any other Bankruptcy Ordinance—not for the purposes of any other Ordinance—he is to be called a sweeter name, and his estate is to be managed in a simpler, more summary and less expensive manner than is necessary in the case of traders whose insolvency may be more complicated and more extensive than the insolvency of a man whose only source of income is a salary not exceeding $350 per month.

In my opinion the intention of the Legisture (which can only be derived from the language it has used) is that a wage-earner against whom an administration order has been made is to be regarded as a bankrupt with certain minor privileges which other bankrupts do not enjoy, among them the sentimental one—if one can attribute sentiment to the Legislature—of being called a debtor instead of a bankrupt in proceedings under the Bankruptcy Ordinance. I return to sub-s. 7, the effect of an administration order is the same " as if in regard to the debtor named therein a receiving order and an order of adjudication had been made against him." I repeat, he is called a debtor instead of a bankrupt only for the purposes of the Bankruptcy Ordinance. The reality of the matter is that he is a bankrupt and in my opinion the phrase "adjudication of such member as a bankrupt " in s. 24 of the Co-operative Societies Ordinance includes the making of a wage-earner's administration order against such member.

I would add two words. The problem I was asked to solve was stated to me by Mr. E. B. Williams in his two capacities of Official Assignee and of Vice-President of the Singapore Government Servants' Co-operative Thrift and Loan Society.

I regret this matter should have come before me. As Attorney-General I had a share in drafting s. 105 of the Bankruptcy Ordinance and in the same capacity I had charge of the section when it was a bill before the Legislative Council of which I was then a member. However, the Official Assignee, the Vice-President of the Coperative Society concerned and the debtor have all united in agreeing to my explaining the effect of the section in question, and in doing so I have not adopted, nor have I been tempted to adopt, a mode of interpretation which commended itself to Bereford, C.J. (See Year Book 5 Edward II) who, knowing the intention of the draftsman of *de donis conditionalibus* read a proviso into that Act which the Act did not contain and which could not be inferred from anything which it did contain.

*Order Accordingly.*

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[ORIGINAL CIVIL JURISDICTION]

McElwaine, C.J.

March 17, 1937.

## *RE* TAN CHENG SIONG DECD.

CHARLES CLEMENT DUNMAN.....Plaintiff

vs.

1. TAN SENG HWEE
2. TAN CHIN TUAN.....Defendants

[SINGAPORE ORIGINATING SUMMONS No. 170 of 1936.]

*Will—construction—words—"children" and "my paternal uncles"—conflict of laws.*

After making divers bequests a Chinese testator directed his trustees to receive the dividend and income derived from certain shares and " thereout to pay yearly to the said Tan Chian Lee (*one of the Trustees*) the sum of one thousand dollars ($1,000/-) for the maintenance of the children of my paternal uncles in China and to divide the balance thereof into four equal parts and to pay one part to my son Tan Swee Hong, one part to my son Tan Seng Hwee and two parts to my adopted son Tan Chin Tuan."

*Held*, that as the Will did not shew that the Testator had created his own dictionary the expressions "paternal uncles" and "children" must be confined to their primary meanings; that is to say, "paternal uncles in China" refers to the natural and lawful brothers of the father of the testator residing in China and "children of my paternal uncles in China" to the natural and lawful children of such paternal uncles. The status of adoption is unknown to the law of the Colony and therefore no rights can be derived from such a status in the Colony.

ORIGINATING SUMMONS.

The questions propounded for determination by the Court and the arguments sufficiently appear from the judgment below.

*John Laycock* for the plaintiff.

*Smith* for the defendants.

*S. K. Dass* for C. F. J. Ess, Deputy Registrar, appointed to represent members of a class of persons interested in contending that the expression " my paternal uncles in China " refers to other persons as well as the natural and lawful brothers of the testator's father.

*Cur. Ad. Vult.*

**McELWAINE, C.J.**—This Originating Summons asks for the determination of certain questions arising on the construction of the will of Tan Cheng Siong, deceased. The present application concerns four of those questions.

Tan Cheng Siong by his last will made on 16th January 1917 appointed Tan Seng Boo, Tan Chian Lee and Mrs. Blackmore to be his excecutors and trustees. The testator died on 17th October 1922 and probate was granted to Tan Seng Boo and Tan Chian Lee, Mrs. Blackmore having previously renounced. By a judgment of the Supreme Court dated 26th May 1927, Tan Seng Boo and Tan Chian Lee were removed from acting further as trustees of the said will and Mr. C. C. Dunman, the present plaintiff was appointed a trustee of the will in place of them.

The first defendant is a son and the second an adopted son of the testator and both are beneficiaries under the will.

The paragraph of the will which I am asked to interpret is as follows:—

"Upon trust in the meantime to receive the dividend and income derived from the said shares and thereout to pay yearly to the said Tan Chian Lee the sum of one thousand dollars ($1,000) for the maintenance of the children of my paternal uncles in China and to divide the balance thereof into four equal parts and to pay one part to my son Tan Swee Hong, one part to my son Tan Seng Hwee and two parts to my adopted son Tan Chin Tuan."

The questions which on the present application I am asked to determine are:—

(1) Does the expression "my paternal uncles in China" refer to the natural and lawful brothers of the father of the testator?

(2) If not, to whom does it refer?

(4) Does the expression "the children of my paternal uncles in China" refer to the natural and lawful children of such paternal uncles.

(5) If not, to whom does it refer?

By an order of Court made on the 4th day of December 1936 Mr. C. F. J. Ess, Deputy Registrar, was appointed to represent for all the purposes of these proceedings the members of the following classes, namely:—

1. All those who are interested in contending that the expression "my paternal uncles in China" contained in the will of the above named Tan Cheng Siong deceased refer to other persons as well as and in addition to the natural and lawful brothers of the father of the testator and;
2. All those who are interested in contending that the expression contained in the said will "the children of my paternal uncles in China" refers to some persons other than and in addition to the natural and lawful children of such paternal uncles.

The defendants are two of the three persons named in the clause of the will which I have set out. The second defendant is also a residuary legatee. Why the other son Tan Swee Hong named in the clause of the will is not a party is not explained. True there is a gift over in the will to the survivor of Tan Swee Hong and the defendant Tan Seng Hwee should either die without issue before a certain date but there is no evidence before me that Tan Swee Hong is dead or that he has no issue. His interest appears, however, to be identical with that of the two defendants so there is no need for his separate representation.

In paragraph 8 of his affidavit the plaintiff swore:

"Since the said Tan Chian Lee was removed by this Honourable Court from acting as trustee of the will of the testator he has taken no further interest in the annuity or yearly payment provided for the maintenance of the children of the testator's paternal uncles in China. Indeed, so far as I have ascertained he never did anything about the matter even when he was acting as excutor and trustee."

The plaintiff has been the sole trustee since 26th May 1927 and there is no suggestion in his affidavit that during this period of almost ten years he has been more active than Tan Chian Lee or that he has taken any steps to ascertain who are the persons entitled to the $12,000 representing twelve years accumulation of the annuity which he has in his hands as trustee for these *cestui que trustent.*

Tan Chian Lee is a brother of the testator. It is possible that the man knows whether he has any brothers in China and if so who they are and where they are but there is nothing to indicate that the slightest enquiry has been made to ascertain them or their children. Nor is there any evidence before me that there are in fact any persons who are interested in contending that the expression "my paternal uncles in China" refers to other persons as well as and in addition to the natural and lawful brothers of the father of the testator, or, that the expression "the children of my paternal uncles in China" refers to some persons other than and in addition to the natural and lawful children of such paternal uncles.

It is premature to decide as between rival claimants when no such claimants are shewn to exist.

Mr. Laycock for the plaintiff trustee cited authorities to shew that the words "uncle" and "child" are to be taken in their natural primary sense unless the will shews that the testator has created his own dictionary, and he referred to *Braddell's* Law of the Straits Settlements 2nd edition Volume I page 88 and *Goh Tat Eng* v. *Goh Eng Loon,* 12 S.S.L.R. 18 as shewing that an adopted son has no rights as such in this Colony.

Mr. Smith for the defendants amplified Mr. Laycock's argument that the expressions used in the will refer only to natural born relatives.

Mr. Das for the suppositious parties contended that Chinese law should apply, that according to that law an adopted son has the same status as a natural child and that therefore in the will "uncle" should include an adopted son of the testator's grandfather and "child" should include an adopted child of the uncle as so defined.

Now Chinese law is foreign law and as such a question of fact to be proved in a Colony Court. No evidence was given to shew that in China an adopted son has all the rights of a natural legitimate son but even assuming that he has such rights by Chinese law it does not follow that a Chinese adopted daughter has similar rights and the word used by the testator is "children" not "sons."

The conclusion at which I have arrived is that the word "uncle" means the legitimate natural brothers of the testator's father and that the word "children" means the natural legitimate children of the testator's paternal uncles in China.

I reach this conclusion for two reasons. First, because the status of adoption is unknown to the law of the Colony notwithstanding section 5 (3) of the Women and Girls Protection Ordinance where the custom is recognized to the extent of excluding from the mischief of the section a bona fide act of adopting a daughter.

Dicey in his Conflict of Laws, 5th edition, at page 533 says "The law of England will not (semble) in England allow any status (such, for example as slavery or relationship arising from adoption) so long as it is unknown to English law or differs substantially in character from the corresponding status in English law." In a note on the same page Dicey opines that A the adopted son of N who, in California, according to the laws of that state, adopted the son, and who himself (N) became domiciled in California before the death of his brother, the intestate, who died in 1925 domiciled in England, cannot claim the intestate's movables in England as next of kin because English common law does not acknowledge relationship by adoption, and any rights in such cases must be given by statute, and nothing in this regard has been amended by the legislation of 1926 which does not disturb rights of property. See too page 535.

I have no doubt that a legacy bequeathed to A (a slave in some foreign country in which slavery was recognized) on condition that he became emancipated would at once vest in A whether emancipated or not, because English law not recognizing the status of slavery would give no effect to the condition that he should cease to have the status that English law does not recognize it as possible for a person to have.

Mr. Das referred me to *In re Andros*, 24 Ch. D. 637. That was a case in which a gift to the children of a foreigner was construed to mean children legitimate by the law of the foreigners' domicil. This case like *In re Goodman's Trusts*, 17 Ch. D., 266 recognized for the purpose of a will or for succession to personalty children who though illegitimate in England were legitimate by the law of the father's domicil, but then legitimacy unlike adoption or slavery is a status recognized by English law.

Once the status is recognized it does not matter so far as personalty is concerned whether the status was acquired by birth in wedlock or by wedlock subsequent to the birth.

The cases in opposition to the view I have adopted are *In re Chu Siang Long's Estate*—Woods' Oriental Cases, page 11, a Penang case of the year 1843 which was apparently not followed in Penang in 1868. See App. III case 8 in the same volume. The decision in *Chu Siang Loong's Estate* was disapproved by Sir Peter Maxwell in his celebrated judgment in *R.* v. *Willans*, 3 Ky. at page 30, and Ford C.J. in *Khoo Tiang Bee* v. *Tan Beng Gwat*, 1 Ky. 413 following Sir Peter Maxwell refused to recognize a right in an adopted daughter to share in an intestate's estate. "The introduction of the custom (of adoption) would be to add one more to the many conflicts of law which in Settlements composed of so many diverse races, are continually arising; to introduce a principle, still further foreign to those general laws of succession which prevail in them; and, as far as I can see, without any potent counterbalancing advantage. It is highly undesirable to multiply laws of inheritance in any country, but, perhaps, more especially over small Settlements like these."

In *Goh Lat Eng* v. *Goh Eng Loon*, 12 S.S.L.R. at page 27 Sercombe Smith, J. said "Even if by that (Chinese) law if ascertained an adopted son is treated in all respects as a legitimate son, I gather from the cases cited that the adopted son of a Chinese whose domicile was the Straits Settlements has not been recognized in the Courts of this Colony, and there is no reported local case known to me which deals with the case of an adopted child of a Chinese who has a Chinese domicile. Nor is there any English case which has decided that adoption, though recognized by a foreign country, will be recognized in English Courts."

Maxwell C.J. and Ford C.J. rested their decisions chiefly on the Charter of 1855, Sercombe Smith J. upon the question of status.

This ground of my decision only covers the case where ordinary words of relationship are used without anything in the will to indicate that the words are not used in their ordinary sense.

Secondly, there is nothing in the will drawn in legal form, and executed in accordance with the Colony Wills Ordinance to indicate that the words "uncle" and "children" used are not intended to bear the usual meaning which they bear in English Law. I was not referred to any definition of "uncle" in any case but I think, that in the absence of indication to the contrary in the context, "uncle" means the legitimate brother born to at least one of the parents of the person speaking of "my uncle." It does not in its primary sense include the husband of an aunt, the male friend of a family who is so addressed by a child, not yet a pawnbroker.

Mr. Laycock referred to *Wells* v. *Wells*, L.R. 18 Eq., 504 in which Sir George Jessell held that the ordinary meaning of "nephews and nieces" is a man's own nephews and nieces, that is, by consanguinity and not by affinity. In *In re Blowers Trusts*, L.R. 6 Ch. App. 351 cited in the last case the Court had adopted the same view. In *Grant* v. *Grant*, 2 P. and D. 8, 3 P. and D. 380, imported consanguinity, but that might in its secondary sense mean affinity and that parol

evidence might be adduced to show which was intended.

In *In re the Goods of George Ashton*, (1892) P. 83 as the will applied the words nephew and niece both to legitimate and illegitimate relatives indiscriminately it was decided that extrinsic evidence was admissible to show that an illegitimate and not legitimate nephew was intended by the will.

The gist of these cases is that the primary meaning of nephew implies consanguinity and I think in the absence of authority to the contrary, that the primary meaning of uncle also implies consanguinity.

I think there is no doubt that the ordinary meaning of "child" is a person born by a woman to her lawful husband. A bastard, a *nullius filius*, is not a son, a distinction drawn by the writer of the Epistle to the Hebrews "then are ye bastards and not sons." Thus in *Godfrey* v. *Davis* 6 Ves. Jun. 43, Arden M.R. said: "Such persons only could be intended, who could entitle themselves as children by the strict rule of law; and no illegitimate child can claim under such a description, unless particularly pointed out by the testator. To the same effect is *Dover* v. *Alexander*, 2 Hare 275. 'Child' taken *simpliciter* means a legitimate child only unless there are any words by which that sense may be controlled, or anything in the context shewing that the word is intended to be used in a secondary sense." Such an intention was inferred in *Wilkinson* v. *Adam* 1 V. & B. 163 where the only children the testator ever had were illegitimate, and in *Quaik Kee Hock*, 4 Ky. 128 where the intention to be gathered from the will shewed that "children" was intended to mean adopted children. In that case Ford C.J. expressly declined to decide whether or not the word "child" in a Chinaman's will included an adopted child. When construing an English will in an English colony where adoption is no part of its law Common or Statute I think the word should not be taken as including an adopted child unless the will indicates that such is intended. The adopted child does not in English law take under an intestacy of his adoptive "father:" why should he take under the will of that "father" to the detriment of that father's natural children?

Under the English Act of 1926 an adopted child succeeds on the intestacy of his natural parents, not on the intestacy of his adoptive parents. So far as I know it has not been decided (and certainly it does not arise for decision in this case) that adoption as the word is used in this Colony deprives a person adopted into one family from succeeding on the intestacy of his natural father, nor that a bequest to "my children" cannot be shared by a natural legitimate child who has been adopted into another family.

But in the case before me the will itself contains a clear indication that "uncle" and "children" were used by the testator in their English sense. The very clause the subject of this summons speaks of children and sons and concludes with the words "my adopted son Tan Chin Tuan." Clearly the testator distinguished between "sons" and adopted sons, even to the extent of redundancy for Tan Chin Tuan being named in the will would not have been deprived of the bequests of having the description "son" applied to him unless it could be shewn that the testator had a natural legitimate son also called Tan Chin Tuan.

For these reasons I answer the first and fourth questions propounded in the summons:

1. "Paternal uncles in China" refers to the natural and lawful brothers of the father of the testator, residing in China.
4. "The children of my paternal uncles in China" refers to the natural and lawful children of such paternal uncles.

Questions two and five therefore do not arise.

Solicitors for Plaintiff—*Braddell Bros.*

Solicitors for Defendants—
*Donalson & Burkanshaw.*

Solicitors for C. F. J. Ess—*S. C. Goho & Co.*

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[ORIGINAL CIVIL JURISDICTION]

CUSSEN, J.

February 7, 1937.

**K. K. N. K. KANAPPA CHETTIAR.....**
**.....Plaintiff.**

**VS.**

**PAKKIRI & 2 ORS.....Defendants.**

**AND**

**K. K. N. K. KANAPPA CHETTIAR.....**
**.....Plaintiff.**

**VS.**

**PAKKIRI .....Defendant.**

[SINGAPORE CONSOLIDATED SUITS Nos. 53 and 261 of 1936.]

*Moneylenders—state of loan—demand for information concerning—lender's duty—retrospective legislation'—Moneylenders Ordinance (Chapter 218) S. 7.*

Where, in respect of a loan made before the Ordinance came into operation, the moneylender supplied the borrower with a statement purporting to show the state of the loan but such statement was not in accordance with the requirements of the Ordinance.

*Held*, that the lender is debarred under Section 7 of the Ordinance from suing for or recovering any sum due on the contract of loan on account either of principal or interest.

TRIAL OF ACTION.